

PERSON RIGHT TO FILE CIVIL SUIT AS PAUPER/INDIGENT PERSON: RULES AND PROCEDURE

1) Who is an Indigent?

1.1) As per **Black Law Dictionary** the term “**Indigent**” means one who is needy and poor, or one who has not sufficient property to furnish him a living nor anyone able to support him to whom he is entitled to look for support.

1.2) The **Explanation 1 of O.33 of the Code of Civil Procedure, 1908** defines the term “**Indigent Person**” as a **Person**:

a) Who doesn't possess **sufficient means** to enable him to pay the prescribed court fee to file any such suit or

b) If no such fee is prescribed he is **not entitled to property of RS. 1000**, except the property exempted of attachment and sale under the order of execution passed by the competent court.

2) Provisions or rules governing to file suit as indigent or pauper

2.1) **O.33 (Rule 1) of the code of civil procedure, 1908** makes provision for the welfare of persons having insufficient means or source of income to protect their legal rights or interest by filing suit as Indigent or Pauper.

2.2) **O.33 Rule 18 of the CPC, 1908** provides discretionary power to the state Govt. to make supplementary provisions in respect of providing free legal aid to such persons who have been permitted by the competent court to sue as an indigent person.

2.3) **O.44 of the Code of Civil Procedure, 1908** in respect of Appeal against the order of trial court rejecting the application to grant leave to sue as an indigent person.

2.4) In addition to these provisions **Article 39A of the Constitution of India** makes provision in respect of **Free legal aid** to persons having no source of income as well as a guarantee to protect their legal rights by providing free legal aid by the state.

3) Prerequisites to invoke provisions under O.33 of the Code of Civil Procedure, 1908

The following conditions should be fulfilled to take aid of this remedy:

3.1) **Person** intended to file **suit as an Indigent person or Forma Pauperis** should **not having sufficient source of income or means** enabling his to pay requisite court fee.

The Apex court in **Sushil Thomas Abraham v. Skyline Builders, (2019) 3 SCC 415** observed that the question as to whether the plaintiff is possessed of sufficient means to pay the requisite Court fees for the plaint in the suit as per the provisions of the Court Fees Act, 1870 is required to be decided by holding an inquiry as prescribed under **Rules 4 to 7 of Order 33** of the Code by the trial Court.

3.2) He should not be **entitled to property** having value more than **RS. 1000/**. (If no court fee has been prescribed)

4) Competent court to declare a person as an Indigent person

Any person who wants to represent himself as an indigent person is required to file an application before the competent court wherein he declares himself to be an indigent person. The competent court, after making proper inquiry and being fully satisfied, pass an order permitting him to sue or defend his legal interest as an Indigent person.

In a landmark judgement the Supreme Court in **Union Bank of India Vs. Khader International Construction and Ors 2001 5 SCC 22**, held that a juristic person can also avail the application under Order 33 of Civil Procedure Code²

5) Necessary contents should be included in the suit for seeking leave to file civil suit to protect legal rights as an Indigent person

The application for seeking leave to file suit as an indigent person should contain following contents:

5.1) The **full particulars** required in regard to plaints in suits;

5.2) A **schedule of the movable and immovable property** belonging to the applicant, with the estimated value thereof; and

5.3) Such Suit should be **signed and verified** in the manner prescribed for the signature and verifications of Pleadings under Order VI Rule 14 & 15 respectively.

6) Procedure to declare a person an indigent person by the court of law

The following procedure is followed to determine whether a person is genuine indigent person or not:

6.1) **Filing of Application** : First of all, **application to seek leave to file civil suit to defend legal rights** is duly presented before the competent court by the Applicant in person unless exempted of, who intends to get himself of declared as an Indigent person.

6.2) **Inquiry to be conducted by the Chief Ministerial Officer of the court or the court itself**: Second stage comes when the competent court conducts **proper inquiry** under **Rule 1A of the Order 33 of the code of civil procedure, 1908** either by the **Chief Ministerial Office** of the court or itself to determine whether the applicant is genuinely an indigent person having no sufficient means. It may accept the report of such officer.

6.3) **Examination to the applicant (Regarding merits of the claim and the Property) by the court**: The competent court examines the applicant in respect of the claim or the property. For the same purpose it issues notice to the opposite party, Govt. Counsel/Pleader and fixes the date of examination of the applicant, witness (if any). The court, after examination of the

applicant/witness and hearing of both the sides, either allow or refuse to entertain such application.

7) Effect of permission or refusal in respect to application for seeking leave to file civil suit as an indigent person

7.1) When the competent court grants permission to sue as an indigent person, the **same application is treated as Plaint in the suit** and shall **proceed in the ordinary manner**. The Central or the State Govt. makes arrangement for rendering free legal aid to such person enabling him to prosecute his case. The **State government can recover Court fees** from the **party as per the direction** in the decree and it will be the first on the subject matter of the suit.

7.2) When the court refuses to accept such application it grants reasonable time to pay the requisite court fee to the applicant. The **order of refusing to allow the applicant to sue as an indigent person** shall be a **bar to a subsequent similar application**.

8) Revocation of permission allowing the applicant to sue as an indigent person

The following are valid grounds to revoke such permission granted by the court:

8.1) The applicant is **guilty of vexatious or improper conduct** in the course of suit

8.2) The applicant is having **sufficient means**

8.3) The other person has **obtained interest** on the subject matter (based on agreement with the applicant).

9) Grounds for rejecting the application for leave to sue as an indigent person

As per **Order 33 Rule 5 of the Code of Civil procedure, 1908** the court reject such application if:

9.1) The application is **not framed and presented before the competent court in the prescribed manner**.

9.2) The applicant is **having sufficient source of income or means** (if finds such after inquiry conducted by the court).

9.3) The applicant has **fraudulently disposed of property within 2 months before the date of filing such application** in order to get permission of the court to sue as indigent person.

9.4) The application is **barred by the period of limitation** prescribed for the same.

9.5) The other person has **obtained interest** on the subject matter (based on agreement with the applicant).

9.6) Any **other person** has made **an agreement** with the applicant **to finance cost of the litigation**.

10) The provision of Appeal against the order of rejecting the application

As per the **Order 43 Rule 1 (Na) of the C.P.C., 1908** the aggrieved person has statutory right to file appeal against the order of rejecting the application to leave to sue as an indigent person. The **period of filing the appeal** against such rejection is **60 days in case of High Court** and **30 days in case of other courts.**

The Apex court in **Sushil Thomas Abraham v. Skyline Builders, (2019) 3 SCC 415** held that a person is not barred from claiming exemption from paying court fees before the High Court under Order 44 of the Code of Civil Procedure (CPC), 1908 on account of being an **indigent person**, merely because such a claim under the corresponding provision of Order 33, CPC was rejected by the Trial Court.

11) Effect of abatement of the suit to sue as an indigent person on account of death of such person

As per **Order 33 Rule 11A of the Code of Civil Procedure, 1908** in case **death of the indigent person** the Court shall pass an order that **amount of court-fees** which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person **shall be recoverable by the State Government from the estate of the deceased plaintiff.**